

Ogden Entertainment Services, Inc. and Service Employees International Union, Local 6, AFL-CIO-CLC. Case 19-CA-24007

September 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed on June 28, 1995, the General Counsel of the National Labor Relations Board issued an amended complaint on August 8, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union as the exclusive bargaining representative of certain employees following the Board's decision and order clarifying the bargaining unit to include those employees in Case 19-UC-565. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the amended complaint admitting in part and denying in part the allegations in the amended complaint.

On September 12, 1995, the General Counsel filed a Motion for Summary Judgment. On September 14, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 28, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the notice to show cause, the Respondent admits its refusal to bargain, but contends that the Board's decision and order clarifying the unit to include the additional "Batter's Box" employees was improper and not supported by substantial evidence.

All issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v.*

NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Delaware corporation with an office and place of business in Seattle, Washington, where it is engaged in the business of food, beverage and novelty sales at the Kingdome and Tacoma Dome facilities.

During the 12-month period preceding issuance of the amended complaint, the Respondent had gross sales of goods and services valued at in excess of \$500,000. During the same period of time, the Respondent sold and shipped goods or provided services from its facilities within the State of Washington to customers outside said State, or sold and shipped goods or provided services to customers within said State, which customers were themselves engaged in interstate commerce by other than indirect means, having a total value of in excess of \$50,000. During the same period, the Respondent purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued at in excess of \$50,000 directly from sources outside said State, or from suppliers within said State which in turn obtained such goods and materials directly from sources outside said State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Union's Representative Status

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All roving vendors, and novelty and program vendors and distribution employees employed by Respondent at public events in the Kingdome Stadium, Seattle, Washington.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and the Union has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining

¹ In the underlying representation proceeding, Member Cohen dissented and would not have accreted the Batter's Box employees to the existing unit. Accordingly, Member Cohen does not join in finding that the Respondent has violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union as the exclusive representative of the Batter's Box employees.

agreements, the most recent of which was effective from April 1, 1991, to March 31, 1994. The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

By Decision on Review and Order dated April 26, 1995, the Board, in Case 19-UC-565, clarified the unit to include "Batter's Box" employees. By letter dated May 8, 1994, and continuing to date, the Respondent refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Batter's Box employees. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Batter's Box employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union as the exclusive bargaining representative of the Batter's Box employees, and if an understanding is reached, to embody that understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Ogden Entertainment Services, Inc., Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Service Employees International Union, Local 6, AFL-CIO, CLC, as the exclusive bargaining representative of the Batter's Box employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the the Bat-

ter's Box employees, and if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Service Employees International Union, Local 6, AFL-CIO, CLC, as the exclusive representative of the Batter's Box employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for the Batter's Box employees.

OGDEN ENTERTAINMENT SERVICES, INC.